

January 17, 2017

Clerk, U.S. Bankruptcy Court

IT IS ORDERED AND NOTICE IS GIVEN that unless within 23 days of the date in the FILED stamp above an interested party BOTH: (1) files a written objection to the Motion below, SETTING FORTH the specific grounds for such objection, with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with 3 or 4, at 1001 SW 5th Ave. #700, Portland OR 97204; OR, if it begins with a 6 or 7, at 405 E 8th Ave #2600, Eugene OR 97401), AND (2) serves a copy on the movant and any attorney for the movant at the service address(es) below, the movant will thereafter settle and compromise the matter upon the terms below and the settlement will be deemed approved without further order.



ANN AIKEN
U.S. District Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re)	
)	
Berjac of Oregon,)	
)	
Debtor(s))	Case No. <u>12-63884-tmr7</u>
)	
THOMAS A. HUNTSBERGER, Trustee,)	Adv. Proc. No. <u>14-06168-tmr</u>
)	
)	MOTION AND NOTICE OF INTENT
)	TO SETTLE AND COMPROMISE
Plaintiff(s))	ADVERSARY PROCEEDING,
)	AND ORDER THEREON
)	
V.)	
)	
UMPQUA HOLDINGS CORPORATION dba UMPQUA)	
BANK, an Oregon corporation; et al.,)	
)	
Defendant(s))	

The undersigned trustee, Thomas A. Huntsberger, moves to settle and compromise the above adversary proceeding upon the following terms:

The Trustee sued Jones & Roth PC, the Debtor's former accounting firm, along with additional defendants Umpqua Holdings Corporation/Umpqua Bank, Pacific Continental Bank/Pacific Continental Corporation, and Summit Bank on several legal theories wherein the Trustee sought to avoid tens of millions of dollars of transfers by Berjac to the defendants in furtherance of an alleged Ponzi scheme. (The Trustee's Litigation). The Trustee's Litigation was transferred by withdrawal of reference to U.S. District Court, Case No. 6:14-cv-01851-AA where it is currently pending. The Trustee's claims against Summit Bank, the Umpqua Bank Defendants and Pacific Continental Bank Defendants have all been settled. A number of Berjac investors also filed a Class Action lawsuit in Multnomah County Circuit Court on behalf of all Berjac Investors against the same defendants, other than Summit Bank, and certain members of the Holcomb family, for tens of millions of dollars in damages for violation of Oregon's Securities Law and Aiding Breach of Fiduciary Duty (the Class Action Case). The Class Action is pending as case number 13-08-12201. The Trustee and the Class Action Plaintiffs have now agreed to settle and compromise all claims brought against Jones & Roth PC ("Jones & Roth") in the Trustee's Litigation and the Class Action Case on the

following terms:

1. Jones & Roth will pay, or cause its insurance carriers Greenwich Ins. Co. and XL Group to pay, a total of \$1,250,000 in settlement and Jones & Roth will deliver the stipulated judgment described in paragraph 2 below. 50% of the cash settlement amount (\$625,000) will be paid to the Class Action Plaintiffs for distribution through the Class Action Case and 50% of settlement amount (\$625,000) will be paid to the Trustee for distribution through the bankruptcy estate.
2. Jones & Roth shall also deliver - one to each of the Trustee and the Class Action Plaintiffs - a stipulated judgment in the amount of \$3,500,000, subject to a covenant not to execute on such judgment against Jones & Roth and authorizing execution against Jones & Roth's other professional insurance carriers Liberty Mutual Ins. Underwriters and Camico Ins. Services. If the Trustee and the Class Action Plaintiffs succeed in their efforts to collect from Liberty Mutual/Camico, the proceeds of collection or settlement shall be divided 50% to the Class Action Plaintiffs and 50% to the Trustee, subject to the court-approved contingent legal fees described in paragraph 5 below.
4. Counsel for the Class Action Plaintiffs, Esler Stephens & Buckley, will also contribute to the Berjac estate the sum of \$10,000 to be applied by the Trustee in partial satisfaction of Hon. Michael R. Hogan's mediation fee.
5. The attorneys for the Class Action Plaintiffs will apply for approval of a contingent attorney fee not to exceed 30% of the gross settlement award in the Class Action Case. The Trustee's attorneys, the law firm of Kent & Johnson, will apply for approval of a contingent attorney fee award not to exceed 20% of the gross settlement award paid to the Berjac bankruptcy estate.
6. Jones & Roth entered into a written settlement agreement with the Trustee in the Trustee's Litigation and with the Class Action Plaintiffs in the Class Action Case.
7. The settlement agreement with the Trustee will provide for mutual releases of claims and that Jones & Roth will withdraw any claims filed against the bankruptcy estate.
8. The parties will cooperate in good faith to achieve all terms of settlement of the Trustee's Litigation and the Class Action Case.
9. The settlement must be approved by the Multnomah County Circuit Court in the Class Action Case and by the U.S. District Court in the Trustee's Litigation. The approval of the settlement in the Class Action Case is subject to a number of conditions and procedures which do not pertain to approval of the settlement in the Trustee's Litigation. The settlement will be voidable if not approved by both courts.

Jones & Roth and the Trustee will seek approval of a claims bar order and injunction (the "Claims Bar") that protects Jones & Roth from current and future claims arising from or related to the Adversary Proceeding and the settlement agreement. The Claims Bar would include any such claims asserted against Jones & Roth by creditors of the Berjac bankruptcy estate and persons, including third parties, who may hold indemnity, contribution or similar claims.

In the Trustee's business judgment, due to the uncertainty of the outcome of the litigation and the ongoing costs of pursuing the estate claims against Jones & Roth, the proposed settlement and compromise is fair and equitable and in the best interests of creditors and the bankruptcy estate.

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DATE: 1/11/17

/s/ Thomas A. Huntsberger

Trustee

Service Address: 870 W. Centennial Blvd.

Springfield, OR 97477

Name of Attorney for Trustee: Brent G. Summers, OSB #824060

Service Address: 621 SW Morrison St., Suite 1225

Portland, OR 97205